

LYONS & FLOOD, LLP
65 W. 36th Street, 7th Floor
New York, NY 10018
(212) 594-2400

Attorneys for Defendant
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD.,

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant,
-----X

ECF CASE

08 Civ. 00223 (JSR)

**SUPPLEMENTAL
AFFIRMATION OF
CAPTAIN ARUN JOLLY**

CAPTAIN ARUN JOLLY affirms in opposition to plaintiff's motion for summary judgment the following under the penalties of perjury under 28 USC § 1746:

1. I am a marine surveyor for Techno Marine Services, located in San Pedro, California. I submit this Supplemental Affirmation in opposition to plaintiff's motion for summary judgment and in further support of MSC's motion for summary judgment.

2. I respectfully refer the Court to my earlier affirmation dated August 7, 2008, and now wish to supplement this affirmation with the following additional points.

3. With all due respect to plaintiff's counsel, my conclusion that the cargo's damage was caused by condensation sweat by the cargo over the course of the voyage was not "pure speculation." It is well known in the maritime shipping

community that flower seeds have a tendency to sweat moisture during long ocean voyages, particularly when the shipper selects non-temperature controlled sea going vans called "dry containers." THOMAS' STOWAGE, the preeminent book on cargo properties, an excerpt of which is attached hereto as Exhibit A, states that seedlings "may give off moisture." It further recommends that seedlings should be shipped by controlled temperature carriage at five (5) degrees Celsius with air freshening and must not be shipped below two (2) degrees Celsius.

4. On April 13, 2007, I was able to inspect the majority of the container's surfaces at the terminal in Long Beach, California. The container was in satisfactory condition with no apparent visible damage or defects.

5. At the cargo inspection on April 17th, I was told by an employee of the consignee, Environmental Seed Producers ("ESP"), that the container had arrived at their warehouse with no visible damage or defects. I was also told that during the devanning of the shipment, ESP noticed streaks of beads of water along the side panels of the container and that the bags along the sidewalls of the container were wet.

6. The pattern of fresh water cargo damage was inconsistent with water infiltrating the container through a hole in its ceiling and/or sidewall. If the water had in fact entered through a hole(s) in the ceiling and/or sidewall, all of the damage would have been to the top of the bags directly beneath the hole(s), and not to all of the bags along the sidewalls. Therefore, fresh water did not penetrate the inside of the container through a hole(s) in its ceiling and/or sidewall.

7. The pattern of cargo damage was also inconsistent with water entering the container through a flood of fresh water. Had there been a flood, all of the

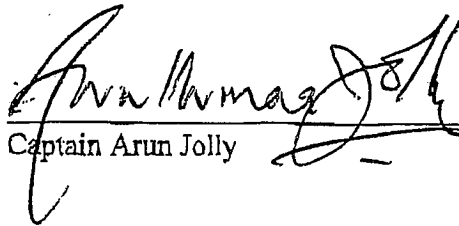
damaged bags would have been at the bottom of the container. This was clearly not the case since bags from the upper tiers were also wet. Therefore, the container was not flooded with fresh water.

8. Given the location of the damaged cargo inside of the container, the container's good condition at outturn, the stuffing of the cargo by the shipper, and the tendency of flower seeds to sweat condensation over the course of a long ocean voyage in a dry container, the only reasonable conclusion is that the moisture that accumulated on the interior sidewalls of the container and damaged the cargo was attributable to the seeds sweating during transit.

9. Furthermore, the loss was caused by the shipper's decision to transport the flower seeds in less costly, non-protective packaging and use a non-temperature controlled dry container. If the shipper had elected to use protective packaging and/or a refrigerated container, the risk of cargo sweat damage to the flower seeds would have been greatly reduced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 19, 2008


Captain Arun Jolly

U:\FLOODDOC\2549114\Motions\Response to Plaintiff's Summ. Jud. Motion\Aff - Jolly.doc

EXHIBIT A

THOMAS' STOWAGE

The Properties and Stowage of Cargoes

ORIGINALLY BY
CAPTAIN R. E. THOMAS, Extra Master

RE-WRITTEN AND COMPLETELY REVISED BY
CAPTAIN O. O. THOMAS, F.C.I.T., Master Mariner

JOHN AGNEW, Master Mariner

K. L. COLE

FURTHER REVISION BY
CAPTAIN KEN RANKIN
1995



GLASGOW
BROWN, SON & FERGUSON, LTD., NAUTICAL PUBLISHERS
4-10 DARNLEY STREET

312

THOMAS' STOWAGE

Commodity *Characteristics* *M3 per Tonne* *Packaging*

SEEDS

Var

All seeds contain oil to a greater or lesser extent, some as much as 60 per cent.

In Bags

<i>Seed</i>	<i>M3/tonne</i>	<i>Seed</i>	<i>M3/tonne</i>	<i>Seed</i>	<i>M3/tonne</i>
Alfalfa	1.59	Croton	2.23	Mustard	1.67
Ajwan	2.23	Cummin	3.48/3.62	Onion	1.81
Alsike	1.28	Dari	1.48	Poppy	1.95/2.01
Alpia	1.67	Durra	1.48	Rape	1.62/1.73
Alpiste	1.67	Fennel	2.65/2.68	Sesame	1.67/1.95
Aniseed	3.34	Flax	1.59	Shursee	1.67
Bayari	1.56	Gingelly	1.67	Sorghum	1.39
Canary	1.39/1.67	Gram	1.39	Spinach	1.95
Caraway	1.67/1.78	Grasses	1.39/2.51	Sugarbeet	3.65/3.67
Cardamon	2.09	Hemp	1.89/1.95	Sunflower	2.09/3.07
Carthamus	2.51	Jowaree	1.34/1.59	Surson	1.67
Castor	1.95/2.23	Linseed	1.53/1.67	Taro	1.39
Cebadello	2.37	Lucerne	1.81	Tares/Vetch	1.37/1.79
Celery	2.12	Mafurra	2.51	Teel	1.67
Clover	1.34/1.67	Millet	1.39/1.53	Timothy	1.95
Common Sds	2.79/3.07	Mirabolans	1.95	Trefoil	1.67
Coriander	3.48/3.62	Mowrah	1.70	Tokmari	1.64
Cotton	2.09/2.51	Mustard	1.67	Turkish Millet	1.48

Bulk

Cotton	1.81	Flax	Linseed	1.39	1.42
Millet	1.25/1.42				

The properties, stowage, etc., of various kinds of seeds are described herein, each under its own name, and they are further dealt with under Part 2, Techniques: Bulk Cargoes, also General Cargoes, bagged.

SEEDLINGS

Cases. Crates

May give off moisture. Controlled temperature carriage + 5 degrees C, with air freshening. Delivery air must not fall below + 2 degrees C.

SELENITE

A transparent form of Gypsum, which see.

SEMETIN

See Middlings

SEMOLINA

1.67/1.73

Bags

A wheat byproduct — a flour. Stow as for Flour, which see.

SENEGAL

An African Gum. See Gums.